

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES GERMALIC,) 4:08CV3223
)
 Plaintiff,)
)
 v.) **MEMORANDUM**
) **AND ORDER**
JOHN GALE,)
)
 Defendant.)

This matter is before the court on Plaintiff's Motion for Leave to Appeal in forma pauperis. (Filing No. [17](#).) Also pending is Plaintiff's Motion for an Extension of Time to file a motion for reconsideration (filing no. [13](#)), and Motion to Continue for the Purpose of Appeal (filing no. [15](#)).

I. LEAVE TO APPEAL IN FORMA PAUPERIS

On September 2, 2009, the court dismissed Plaintiff's claims without prejudice and entered judgment against Plaintiff. (Filing Nos. [11](#) and [12](#).) Plaintiff filed a timely Notice of Appeal of the court's Judgment. (Filing No. [16](#).) Plaintiff is a non-prisoner and has not previously been granted leave to proceed in forma pauperis ("IFP") in this matter.

As set forth in [Federal Rule of Appellate Procedure 24\(a\)\(1\)](#):

Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for

fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

Fed. R. App. P. 24(a)(1). The court has carefully reviewed the record. Plaintiff has filed an Affidavit to proceed without payment of fees that declares he is entitled to the relief sought in his Complaint. (Filing No. [17](#) at CM/ECF pp. 1-2.) Therefore, Plaintiff's Motion for Leave to Appeal IFP is granted.

II. REMAINING MOTIONS

Plaintiff also filed a Motion for an Extension of Time to file a motion for reconsideration (filing no. [13](#)), and a Motion to Continue for the Purpose of Appeal (filing no. [15](#)). However, Plaintiff's October 2, 2009 Notice of Appeal renders these Motions moot.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion for Leave to Appeal in forma pauperis (filing no. [17](#)) is granted
2. The Clerk of the court shall provide the Court of Appeals with a copy of this Memorandum and Order.
3. Plaintiff's Motion for an Extension of Time to file a motion for reconsideration (filing no. [13](#)) and a Motion to Continue for the Purpose of Appeal (filing no. [15](#)) are denied as moot.

November 25, 2009.

BY THE COURT:

Richard G. Kopf
United States District Judge

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